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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 757

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims (Pet. App. A, 19) is not officially reported.

JURISDICTION

The Court of Claims entered its order on December 6, 1961 (Pet. App. A, 19). The petition for a writ of certiorari was filed on February 28, 1962. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1255.

QUESTIONS PRESENTED

1. Whether a motion to vacate a prior judgment was properly denied by the Court of Claims, when

the motion was based on a change in the law occurring after the original judgment and the change of law occurred in another suit involving the same taxpayer.

2. Whether the Court of Claims must make findings of fact and enter conclusions of law in ruling on a motion to vacate a judgment under Court of Claims Rule 54(b), when the motion and the response to it raise no factual issues.

RULES INVOLVED

The pertinent portions of Rules 48 and 54 of the Rules of the United States Court of Claims (rev. 1957) are as follows:

> "RULE 48. FINDINGS BY THE COURT.
>
> In all actions tried on the facts, the Court shall find the facts and state separately its conclusions of law and direct the entry of an appropriate judgment. The Court may adopt the Commissioner's report, including conclusions of fact and of law, or may modify it, or may reject it in whole or in part, or may direct the Commissioner to receive further evidence, or may refer the case back to him with instructions. Due regard shall be given to the opportunity of the trial Commissioner to judge of the credibility of the witnesses, and the findings of fact made by the Commissioner will be presumed to be correct.
>
> RULE 54. RELIEF FROM JUDGMENT OR ORDER.
>
> * * * * *
>
> (b) *Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.:* On motion and upon such terms as are just,

the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 53(c); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the Court. The relief provided by this rule shall be in addition to the relief available to the United States under Rule 53(a)(2).

STATEMENT

Petitioner sought in this case to have the Court of Claims vacate its judgment of December 6, 1955, in *Consolidated Edison Co.* v. *United States*, 135 F. Supp. 881 (see Pet. App. E, 27–54). The Court

of Claims there held that Consolidated Edison, as an accrual-basis taxpayer, must deduct city and state property taxes in the years of payment (1938, 1939 and 1940), even though payment had been made under protest, and ultimate liability for the property taxes was not fixed until a subsequent year (1941). Thereafter, the taxpayer petitioned this Court for a writ of certiorari, which was denied on April 23, 1956. 351 U.S. 909. The taxpayer also filed an out-of-time petition for rehearing which was denied by this Court on February 25, 1957. 352 U.S. 1019. The judgment[1] of the Court of Claims became final and was satisfied.

A suit for the return of certain 1951 taxes was subsequently brought by the taxpayer in the District Court for the Southern District of New York, claiming that it was entitled to deduct in that year state and city property taxes that had been paid from 1946 through 1950 under protest. This suit for the later year involved the same legal issue presented in the prior suit in the Court of Claims. The district court decided the case in favor of the United States, agreeing with the Court of Claims on the legal principle involved. *Consolidated Edison Co.* v. *United States*, 162 F. Supp. 854. The Court of Appeals for the Second Circuit disagreed and held, reversing the district court, that deduction for the state and city property taxes should be taken in the year when

[1] The Court of Claims litigation involved three consolidated suits. For purposes of simplicity, references to the result of that litigation will be made as though only one judgment were involved.

the contest with state and city taxing authorities was concluded. *Consolidated Edison Co.* v. *United States*, 279 F. 2d 152.

In view of the conflict between the Court of Appeals for the Second Circuit and the Court of Claims, the United States petitioned this Court for a writ of certiorari, which was granted on November 14, 1960. 364 U.S. 890. Contemporaneously, the taxpayer, on September 20, 1960, filed in this Court a motion for leave to file a second petition for rehearing with respect to its petition for a writ of certiorari to the Court of Claims which had been denied on April 23, 1956. This motion was denied on November 14, 1960, the same day that certiorari was granted to review the Second Circuit's decision. 364 U.S. 898. After argument on the merits concerning the taxpayer's 1951 liability, this Court affirmed the Second Circuit's decision and concluded, contrary to the Court of Claims, that accrual of liability to the City and State of New York for property taxes must await the conclusion of all events that fixed liability. *United States* v. *Consolidated Edison Co.*, 366 U.S. 380.

Thereafter, on June 30, 1961, the taxpayer filed its petition and motion in the Court of Claims to vacate the judgment of that court which had become final following denial of certiorari on April 23, 1956. The United States filed its brief in opposition to the motion, and the motion was denied on December 6, 1961 (Pet. App. A, 19). It is from the denial of

this motion that the taxpayer now petitions for a writ of certiorari.

ARGUMENT

1. Respect for the finality of judgments has long been a basic principle in our system of jurisprudence. As this Court has stated (*Baldwin* v. *Traveling Men's Assn.*, 283 U.S. 522, 525–526):

> Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

The taxpayer, by motion, sought to vacate a judgment of the Court of Claims which had become final on April 23, 1956, when this Court denied its petition for writ of certiorari. It was thus attacking a final judgment that had been valid and subsisting for over five years.

The taxpayer claims, however, that the rule of law, upon which the Court of Claims had rested its decision, was subsequently overruled in another case by this Court,[2] and that therefore under Court of Claims

[2] It is, of course, undisputed that this Court's decision in *United States* v. *Consolidated Edison Co.*, 366 U.S. 380, did change the rule of law upon which the earlier Court of Claims' judgment was based.

Rule 54(b)(6), *supra*, it should be relieved from the earlier judgment. The taxpayer contends that, in denying this motion, the Court of Claims misconstrued and misapplied the scope of Rule 54(b)(6). The rule provides that:

> On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment.

Rule 54(b) of the Court of Claims, which was adopted in 1951, is in all material respects identical with Rule 60(b) of the Federal Rules of Civil Procedure, as amended December 27, 1946, and was clearly patterned on the latter rule. The 1946 amendment which added Rule 60(b)(6) received the following commentary from the Advisory Committee on Rules for Civil Procedure:[3] "It should be noted that Rule 60(b) does not assume to define the substantive law as to the grounds for vacating judgments, but merely prescribes the practice in proceedings to obtain relief." Since no change in the substantive law as to the grounds for vacating judgments was intended by this amendment, we must look to prior case law in determining those grounds.

Consistent with the policy of respecting final judgments, it has been always held that a subsequent change in the authoritative rule of law is not sufficient

[3] See Report of Proposed Amendments to Rules of Civil Procedure for the District Courts of the United States (June 1946), p. 84.

grounds to vacate a final judgment entered on a decision before the change. This rule has been uniformly applied in this Court and the lower federal courts, both before and subsequent to the promulgation of the Federal Rules of Civil Procedure. *Scotten* v. *Littlefield*, 235 U.S. 407; *Simmons Co.* v. *Grier Bros. Co.*, 258 U.S. 82; *Collins* v. *City of Wichita*, 254 F. 2d 837 (C.A. 10); *Berryhill* v. *United States*, 199 F. 2d 217 (C.A. 6); *United States* v. *Kunz*, 163 F. 2d 344 (C.A. 2); *Lehman Co.* v. *Appleton Toy & Furniture Co.*, 148 F. 2d 988 (C.A. 7); *Safeway Stores* v. *Coe*, 136 F. 2d 771 (C.A. D.C.); *Hoffman* v. *Knox*, 50 Fed. 484 (C.A. 4); *Tilghman* v. *Werk*, 39 Fed. 680 (S.D. Ohio); cf. *Ackermann* v. *United States*, 340 U.S. 193; *Annat* v. *Beard*, 277 F. 2d 534 (C.A. 5), certiorari denied, 364 U.S. 908; *Title* v. *United States*, 263 F. 2d 28 (C.A. 9). The taxpayer has cited no case in conflict with this principle.[4]

The taxpayer seems to recognize that a subsequent change in the law is ordinarily not grounds for vacating a judgment (Pet. 15), but argues that this rule should not apply where the change in law occurs in a subsequent suit by the same taxpayer particularly if the two suits constituted a single

[4] The taxpayer implies (Pet. 13) that this Court's decisions in *Polites* v. *United States*, 364 U.S. 426, and *System Federation No. 91* v. *Wright*, 364 U.S. 642, recognize that a subsequent change in law may be grounds to vacate a judgment. However, in *Polites*, the Court specifically declined to decide the point (364 U.S. at 433), and in *System Federation*, the decision was rested on the inherent power of a court of equity to modify the prospective effect of an injunctive decree in the light of changed circumstances.

controversy. The taxpayer contends (Pet. 7) that both the original suit in the Court of Claims and the subsequent suit in the district court, which subsequently was reviewed by this Court, were parts of one controversy. It is clear, however, that tax liability for each taxable year is separate and distinct. See *Commissioner* v. *Sunnen*, 333 U.S. 591, 598. Here the taxpayer voluntarily chose to litigate in two different courts, and, although involving common questions of law, the two suits were separate and distinct legal controversies. If one were to accept taxpayer's construction of this as a single controversy, it would follow that the second suit should have been dismissed as *res judicata* (or for splitting the cause of action). Now that that hurdle has been passed, the taxpayer cannot ignore the separate identity of the suit which permitted him to relitigate the common question of law.

2. In disposing of the taxpayer's motion to vacate the prior judgment, the Court of Claims made no findings of fact or conclusions of law, and rendered no opinion. The motion was simply disposed of by an order of denial (Pet. App. A, 19). The taxpayer now asserts that the court's action was such a departure from its procedural rules (Rule 48) as to call for the exercise of this Court's supervisory power over the lower federal courts (Pet. 10–11).

Under Court of Claims Rule 54(b), *supra*, pp. 2–3, a proceeding to vacate a final judgment of that court may take the form either of a motion or an independent action. Petitioner chose to proceed by motion. Court of Claims Rule 48, *supra*, p. 2,

provides: "In all actions tried on the facts, the Court shall find the facts and state separately its conclusions of law * * *." This rule clearly does not govern the disposition of motions to vacate judgments. Such a motion is not an action, but rather is an ancillary proceeding. Although some lower courts have, in their discretion, filed opinions in disposing of motions to vacate final judgments (see Pet. 10–11, note 29), petitioner cites no case holding that a trial court must do so. The only case discovered holds clearly to the contrary. In *Delzona Corp. v. Sacks*, 265 F. 2d 157, 159, the Third Circuit held that Rule 52(a) of the Federal Rules of Civil Procedure—which provides that "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion * * *"—did not require findings of fact and conclusions of law for decisions on motions to vacate a judgment under Federal Rule 60(b). Accord, 7 Moore, *Federal Practice* (2d ed.), par. 60.28, p. 330.

In addition, even if the taxpayer had brought an independent action, the clear language of Rule 48 states that the Court of Claims is required to make findings of fact and enter conclusions of law only in "actions tried on the facts." Here, as the taxpayer admits (Pet. 8–9), the facts relied on in support of the motion were uncontroverted. Therefore, no issue was raised other than the legal sufficiency of the motion as a basis for relief from a final judgment. If the facts, as alleged, do not state legal grounds for relief, there can be no purpose served in deter-

mining the uncontroverted truth of these legally inadequate allegations.

It is also contended (Pet. 17–18) that the failure of the Court of Claims to render an opinion in denying the motion resulted in a deprivation of property without due process. Petitioner's argument, if correct, would require an opinion in ruling on any motion that raised a point of law. The fallacy of this argument is apparent from the express provisions of Rule 52(a) of the Federal Rules of Civil Procedure, *supra*, p. 10. Moreover, a motion to vacate a judgment in the Court of Claims on a question of law is largely equivalent to a delayed motion for rehearing. It would be a burdensome rule, indeed, which required a court to render an opinion with findings every time it denied a motion for rehearing. It cannot seriously be contended that due process requires such a rule.

CONCLUSION

We respectfully submit that the petition for a writ of certiorari should be denied.

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